

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Request for Review of Decision of Universal	)	
Service Administrator by Corr Wireless	)	
Communications, LLC	)	

**REPLY COMMENTS OF  
MTPCS, LLC D/B/A CELLULAR ONE**

Julia K. Tanner  
General Counsel

MTPCS, LLC d/b/a Cellular One  
1170 Devon Park Drive, Suite 104  
Wayne, Pennsylvania 19087

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**REPLY COMMENTS OF  
MTPCS, LLC D/B/A CELLULAR ONE**

MTPCS, LLC d/b/a Cellular One and its affiliates (collectively, “MTPCS”) hereby submit Reply Comments in response to the Notice of Proposed Rule Making (“*Notice*”) in the above-captioned dockets.<sup>1</sup> MTPCS is a facilities-based wireless carrier that, with its affiliates, provides GSM cellular, PCS and satellite services in rural Montana, Wyoming, Texas, Oklahoma, Louisiana, and the Gulf of Mexico. MTPCS utilizes universal funding as necessary support to its operations in portions of Montana and Oklahoma, and recently it was designated for support in central Louisiana.

**I. Summary.**

This proceeding is about the value and the future of rural competitive services. Removing CETC support from the CETC state funding pools – support that is needed in some

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<sup>1</sup> / *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, d Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010) (“*Corr Wireless Notice*” or “*Notice*”).

areas to replenish per-line support reductions – is likely to lead to rollback of competitive services and deter the transition to broadband.<sup>2</sup> The Commission must not enable the removal of funding from the state “interim” cap amounts, certainly not without first providing a replacement support mechanism and designating the removed customer contributions for use by CETCs.

The current wireless infrastructure and maintenance must not be underfunded; the time and funds already invested in existing towers and equipment must be retained, as necessary to rapid and efficient progression toward the broadband future. Chairman Genachowski aptly noted today: *“Smart infrastructure policies not only sustain commerce, they strengthen our communities. . . . One of the most important components of the National Broadband Plan is that it recognizes how central wireless broadband is to our future.”*<sup>3</sup>

MTPCS respectfully suggests that wireless broadband deployment will proceed most efficiently if existing infrastructure, including that of the competitive carriers in high cost areas and tribal lands, is fully supported and available.

Years from now, looking back on the success or failure of our nation's broadband strategy and our place in the world, the continued funding of the foundational infrastructure of wireless and the smoothness of the transition will be judged as having been responsible for that outcome:

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<sup>2</sup> / Consider, *e.g.*, the situation described by the Virgin Islands Public Services Commission (VIPSC): “this proposal could seriously undermine universal access to basic wireless services in many areas within the Virgin Islands. The Virgin Islands largest CETC (Centennial USVI Operations) recently petitioned for relinquishment and the only other CETC (Choice Communications, LLC) just entered the market and has few customers. Both CETCs are wireless carriers.” VIPSC Comments, at 1-2. “Under the proposed rule, the relinquishment of ETC status by our largest CETC [AT&T, as purchaser of Centennial; petition to relinquish pending] could effectively reduce the cap to almost zero and could jeopardize basic wireless access in those areas that are currently under-served or unserved. ***If no USF funds are available, no carrier would apply for ETC designation and there would be no obligation for any carrier to build wireless infrastructure in those areas.***” VIPSC Comments, at 5 (footnotes omitted).

<sup>3</sup> / Prepared Remarks of Chairman Julius Genachowski, FCC Spectrum Summit: Unleashing America’s Invisible Infrastructure (Washington, D.C.: October 21, 2010), at 2.

whether the United States remains 15<sup>th</sup> among the world's developed nations or becomes a leader in mobile broadband deployment, as it rightly should be.

In sum, MTPCS urges the Commission not to amend the interim cap rule so a state's interim cap amount would be adjusted if a competitive ETC serving the state relinquishes its ETC status. In addition, the Commission should not make permanent any waiver of Section 54.709(b) or otherwise enable itself to direct USAC to reserve reclaimed funds. The Commission's rules provide that universal service among wireless CETCs is not duplicative, but portable, and therefore it is irrelevant how many wireless CETCs are designated. Funding to CETCs goes up, not in proportion to the number of CETCs, but only in proportion to the number of customers served. Thus, CETC funding prior to the cap rose simply because more and more high cost area customers were choosing competitive services over incumbent services, as shown in the Commission's statistics, noted in MTPCS' comments.

CETC customer numbers continue to rise, but funding is remaining static; hence, support per customer is dropping, and it is increasingly difficult for CETCs to maintain, let alone expand, service in rural and insular areas. To further restrict the CETC funding pool would be to seriously damage high cost service in some states, as evidenced by the comments of the New Mexico and Virgin Islands regulatory commissions in this proceeding.

In rural, hard to serve states, previously designated CETC support amounts are necessary in order to provide the designated services. All designated support is needed to sustain competitive service, particularly in areas that impose strict buildout requirements upon CETCs or where long transport or relay distances and local geographic conditions raise the costs of equipment and services. Entities that relinquish funding may be doing so out of obligations

imposed in connection with transactions, as noted by Sprint,<sup>4</sup> rather than any unique ability to in fact provide quality service and good coverage in high cost areas without support. Such entities will be motivated by their relinquishment of support to not spend their urban profits on service to rural areas. Accordingly, the need for supported competitors in rural areas remains, as the quality and reach of other carriers' services in such regions are likely to diminish over time.

Wireless carriers contribute disproportionately to the high-cost fund. They should not be targeted for support reduction out of mistaken beliefs that support is not needed. Support is not "duplicative" if only the carrier serving a customer receives support to reimburse its costs of service to that customer.

**II. CETC Support Today Is The Foundation of Broadband Tomorrow. The FCC Should *Seamlessly Transition* All Carriers' Support Simultaneously, After Making Available Replacement Funding, to Comply With the Act and Technological Neutrality. To Preserve CETC Service – the Only or Primary Service Reaching Some Areas, As Evidenced By Comments – the FCC Should Not Adopt the *Notice Proposals*. CETCs Would Suffer Significant Losses Under the Proposals.**

***a. CETC Support Today Is The Foundation of Broadband Tomorrow.***

The cost and time to deploy broadband from an existing wireless infrastructure is dramatically less than the cost and time needed to deploy broadband without such foundational infrastructure. Accordingly, any reduction in CETC support today will limit, delay, or prevent future broadband deployment. Any national strategy or agenda for broadband deployment, therefore, should include continued support today for wireless services and a smooth transition over a reasonable timeframe from basic wireless services to broadband. As stated today by

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<sup>4</sup> / See Comments of Sprint Nextel, at 2 (citations omitted for brevity) ("ETCs generally relinquish or limit their high-cost USF receipts in order to satisfy a transaction-related requirement rather than because they no longer need or have use for such support").

Chairman Genachowski, ““The explosive growth in mobile communications is outpacing our ability to keep up.”<sup>5</sup> Maintaining existing infrastructure is a key component of keeping up.

The Commission must permit carriers to retain and maintain their existing towers and equipment, as necessary to permit rapid and efficient progression toward the broadband future. If funds are reduced more now and towers must be abandoned, any path to the desired broadband future would be slowed by exceedingly lengthy new site acquisition and permitting processes and new site construction investments.

As Commissioner Baker stated this Tuesday, “*We need to take another, more focused look at the many issues associated with encouraging the roll out in rural areas and develop a logical, short term action plan.*”<sup>6</sup> MTPCS respectfully agrees. Years from now, looking back on the success or failure of our nation's broadband strategy and our place in the world, the continued funding of the foundational infrastructure of wireless and the smoothness of the transition will be judged responsible for that outcome: whether the United States continues to rank 15th<sup>7</sup> in broadband deployment and adoption among the world's developed nations or becomes a leader in mobile broadband deployment, as it rightly should be.

***b. The FCC should seamlessly transition all carriers to high-cost broadband support simultaneously, after making available replacement funding.***

The FCC should ***transition*** all high cost ETCs, including CETCs, to high-cost broadband support seamlessly and simultaneously, rather than first enabling the decrease of support to the

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<sup>5</sup> / FCC News: *FCC Announces Release of Mobile Broadband Spectrum Forecast* (Oct. 21, 2010).

<sup>6</sup> / Remarks of Commissioner Meredith Baker, Four Action Items for 4G, LSI Conference on Spectrum and Broadband: National Broadband Plan Implementation (October 19, 2010).

<sup>7</sup> / See U.S. G.A.O., *Telecommunications: National Broadband Plan Reflects the Experiences of Leading Countries, but Implementation Will Be Challenging*, available at <http://www.gao.gov/new.items/d10825.pdf> (GAO-10-825, September 14, 2010).



providers of newer services, without even making available a replacement support mechanism. Most CETCs are wireless; hence, the proposals in the *Notice* would limit service to a targeted sector, contrary to the FCC’s principle of technological neutrality in provision of funding.

***c. Removing competitors’ support before making available a substitute, and before removing funding to other carriers, would violate the principles set forth in Section 254 and technological neutrality.***

MTPCS urges the Commission to comply with its statutory mandates – basing its policies for the “***preservation and advancement***”<sup>8</sup> of universal service upon principles including:

“Quality services should be available at just, reasonable, and affordable rates,”<sup>9</sup>

“Access to advanced telecommunications and information services should be provided in all regions of the Nation,”<sup>10</sup>

“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas,”<sup>11</sup> and

“There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”<sup>12</sup>

The Act provides that policies shall “preserv[e] as well as “advanc[e]” universal service. The proposals of the *Notice* would fail to preserve and advance universal service, rather than supporting competition to the benefit of the public in a fair and equitable manner.

In some states, including Montana, CETCs are not currently receiving even the support amounts per line for which they were initially designated, as a result of designation of additional CETCs after the cap became effective, or simply the decline of per-line support through the ordinary addition of subscribers over time. In such states, absent rapid restoration of sufficient

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<sup>8</sup> / See 47 U.S.C. § 254(b).

<sup>9</sup> / 47 U.S.C. § 254(b)(1).

<sup>10</sup> / 47 U.S.C. § 254(b)(2).

<sup>11</sup> / 47 U.S.C. § 254(b)(3).

<sup>12</sup> / 47 U.S.C. § 254(b)(5).

support whenever possible, or rapid substitution of another support mechanism, it appears inevitable that universal service will deteriorate and members of the public will lose their desired supported services. Some citizens will lose all hope of receiving service at all, any time soon.

***d. In order to preserve the provision of CETC service – the only service in some areas, and the primary service in others – and comply with the mandates in the Act, the FCC should not adopt the Notice proposals. CETCs would suffer significant losses under the proposals.***

Addition of subscribers over time, relinquishment by a major CETC, or designation of new CETCs to maintain or improve basic service coverage in rural areas, would all have the same effect – diminishing the ability to provide competitive service to customers – if the *Notice* proposals are adopted. The Virgin Islands, see supra n. 2, has a relinquishment petition pending and its only other CETC has few customers. The dramatic loss of CETC funding that would be occasioned there by the proposed changes is a good example of the havoc the proposals would wreak upon rural and insular areas (“could effectively reduce the cap to almost zero and could jeopardize basic wireless access in those areas that are currently under-served or unserved. *If no USF funds are available, no carrier would apply for ETC designation and there would be no obligation for any carrier to build wireless infrastructure in those areas.*”).<sup>13</sup> All states and insular areas that designated CETCs after adoption of the cap, experienced increased CETC subscriber base or have a relinquishing CETC with a significant portion of the current CETC customer base, are in a similar situation and deserving of support, not a twisting of the knife.

**CETCs would suffer significant losses under the NPRM proposals.** Under the new proposals, if ETC status relating to numerous lines is relinquished, then the annual cap amount would be reduced by the relinquishing carrier’s support at the time of relinquishment. This would result in a lesser amount of funds for distribution to CETCs and a change in the cap

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<sup>13</sup> / VIPSC Comments, at 5 (footnotes omitted).

reduction factor. In states where eligibility for CETC high cost support exceeds the annual state cap amount, relinquishment would result in existing CETCs losing support for maintenance of service to rural customers. If the relinquishment involves a large amount of support, the lost support to other CETCs would be significant.

**CETC services are the only services provided in some areas, and the primary services provided in other areas.** As noted by the New Mexico Public Regulation Commission (NMPRC), “The FCC's use of the term "duplicative legacy voice services" is a mischaracterization of the provisioning of these services in many rural areas of New Mexico where *cell towers are opening up wireless service for the first time. A service is not a duplicative legacy voice service if there are no services available in the area where it is being deployed....*

*“New Mexico has large areas with extremely low telephone penetration rates. There are CETCs in New Mexico such as Smith Bagley, Plateau Wireless, and Leaco Wireless that rely on federal funding which would be impacted by the non redistribution of the relinquished support to the State's CETCs limiting their ability to build out facilities and serve tribal members in rural areas.”* Comments of the NMPRC, at 3. The NMPRC also states that the deployment of broadband “should not be done at the expense of the provisioning of telephone service in unserved areas at the current time.” *Id.*, at 5. MTPCS agrees.

**III. Support Already Designated For CETC pools Is Not A “windfall.” It Is Necessary To Sustain Business Plans Based Upon “Sufficient” And “Predictable” Funding, To Continue Operations In Areas That Are Extraordinarily Costly To Serve. Wireless CETCs Are Subject To “Carrier of Last Resort” Obligations, As Well As State Regulation of Service Quality And Coverage Requirements.**

To briefly correct a few misunderstandings about CETCs:

- There is no “windfall” to CETCs through “identical support.”<sup>14</sup> Companies such as MTPCS, which must construct network in sparsely populated, geographically vast, often mountainous and icy regions, vitally need the designated support in order to provide and maintain supported services. The designated amounts are necessary to support competition – and in some cases, any service at all – in rural, insular and remote areas.
- Wireless carriers must pay tens or hundreds of thousands of dollars for spectrum, as well as millions of dollars for cell site construction or lease costs and maintenance. These costs must be incurred for competitive service, and the corresponding rates and service quality mandated by the statute, to exist. Facilities-based commercial wireless is not free of cost; this is a business built with hard work and real steel. Urban areas may generate profits, but service to rural and insular areas is in all respects a public service.
- Wireless CETCs, like other ETCs, are subject to “carrier of last resort” obligations. The federal rules require:

In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

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<sup>14</sup> / Contrary to the opinion of Free Press, redistribution of funds to other CETCs *who were already designated to receive more funding than they are now receiving* in order to serve their high cost customers would indeed further universal service goals. Provision of the support these CETCs *are legally designated to receive to support their service to customers*, as a result of eligibility designations and initial USAC funding allocations, but do not receive because the cap is artificially reducing support, is not a “windfall.” This support is important in order to permit CETCs to meet their business plans, based upon what was then expected to be a “sufficient” and “predictable” funding system, so as to continue viable operations. Particularly in states with coverage requirements and challenging terrain, significant costs must be incurred to serve remote, challenging terrain with a wireless network, including spectrum, fiber or microwave backhaul, interconnection, roaming, cell site construction, base station maintenance, etc., etc., etc. Quality competitive services cannot be provided to customers at low rates, in the absence of support, in high-cost areas. If competitors are driven out of these areas by the withdrawal of support to CETCs, monopoly service, rates and quality will again become the norm.

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost....<sup>15</sup>

- Wireless CETCs must also demonstrate that they in compliance with applicable consumer protection and service quality standards. 47 C.F.R. § 54.202(a)(3).

Wireless service in rural and insular areas, although increasingly desired by citizens,<sup>16</sup> is not a walk in the park. It is facile to paint small rural competitors as if they, not the carriers who serve lucrative urban areas, had excess funding. In fact, these areas are challenging and extremely costly to serve; entities throwing stones are advocating policies designed to drive small competitors out of business and result in an initial monopoly and, eventually, no service at all in remote areas.

**IV. Relinquished Funds For Which There is Current CETC Eligibility Cannot Legally Be Reserved for Other Uses; These Should Be Immediately Available For CETC Funding. Relinquished Funds Were Contributed Into the Current Support System, Which Designated Them For State CETC Funding Amounts. If State CETCs Do Not Currently Have Eligibility for the Funds, Then Reservation Might Be Legal Until Such a Need Arises.**

MTPCS proposes that in any state or insular area where CETCs are not receiving the full amounts for which they would have been eligible absent the cap, relinquished funds should be restored to the existing pool to support provision of high cost services by such CETCs.

Conversely, if CETCs are receiving the full amounts for which they would have been eligible absent the cap, MTPCS recommends that the cap amount for the state remain not less than the

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<sup>15</sup> / 47 CFR § 54.202.

<sup>16</sup> / As noted in *Mobile Broadband: The Benefits of Additional Spectrum*, FCC, OBI Tech. Paper No. 6 (rel. Oct. 21, 2010), "The drive to make available new spectrum for broadband is grounded in strong consumer demand for high-speed wireless Internet access."

2008 level, and the relinquished funds could be reserved by USAC, but if and when additional CETCs are designated or additional lines added to the CETC eligible lines in the state or territory, support disbursements would commence promptly for those newly eligible lines from the pool, and USAC would start reserving a lesser amount each month. *These proposals, which we think would equally apply to insular areas as well as states, would help alleviate the concerns of the Virgin Islands Commission and the New Mexico Commission.*

Relinquished support was paid in by customers, in compliance with and subject to the current universal service system, which allocated that support for competitive services in each state. If funding needed for eligible CETC lines in a state exceeds the capped amount in the state, removing funding and lowering the pool ceilings not only would contravene the legally permissible use of such funds,<sup>17</sup> as retroactive rulemaking aimed at already-allocated funds, but also would fail to sustain provision of basic services to high-cost-area customers. The proposals would roll back wireless,<sup>18</sup> contrary to the desire of rural residents in need of wireless service, and contrary to the intent of the state commissions that designated those carriers as CETCs. We do not believe the Commission would want to subvert the trends towards mobility and competition, in the face of steadily rising subscribership numbers for competitive services.<sup>19</sup>

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<sup>17</sup> / See 47 U.S.C. § 254(e) (stating that universal service support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”)

<sup>18</sup> / Perhaps it is for this reason that wireline organizations, such as the Telephone Association of Maine, have filed Comments solely questioning the legality of reserving any relinquished CETC funds to a Mobility Pool – perhaps they would prefer that the funds allocated for provision of service to wireless customers, and largely contributed by surcharges on said wireless customers, be diverted to support legacy wireline systems.

<sup>19</sup> / In June, 1998, there were approximately 172 million switched local exchange lines and more than 60 million reported wireless customers in the nation. See *Trends in Telephone Service*, Industry Analysis Division, CCB, FCC, at Tables 2.1, 9.3, 17.1 (rel. February, 1999). A decade later, there were approximately 133 million traditional switched access lines and more than 260 million wireless subscribers. See *News Release, Second Local*

**The Commission Does Not Have Authority To Permit USAC To Reserve CETC Funds, When Remaining CETCs Have Eligibility For Funding in the State In Excess of the Remaining Amount.** In the *Interim Cap Order*,<sup>20</sup> the Commission stated that the cap “limits the annual amount of high-cost support that competitive ETCs can receive in the interim period for each state to the amount competitive ETCs were eligible to receive in that state during March 2008, on an annualized basis.”<sup>21</sup> Accordingly, the logical implication, upon which carriers based revised business plans, was that, for some unspecified time, the “annual amount of high-cost support that competitive ETCs can receive... for each state” is “the amount competitive ETCs were eligible to receive in that state during March 2008.” Not less.

MTPCS urges the Commission to demonstrate that it values the provision of competitive services in rural states, and in states where eligibility for competitive basic services exceeds the cap amount, not to permit USAC to reserve funds for other uses.

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*Competition Report* (September 3, 2010); *September 2010 Trends in Telephone Service*, Chart 11.1. **Thus, with declining switched access lines and increasing wireless customers, it is logical that CETCs, increasingly more than RBOCs, became the companies needing universal service support to reach rural residents.** Rural residents, along with much of the country, have been moving from landline to wireless service. The support needed for provision of service should move with them.

<sup>20</sup> / *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (2008) (“*Interim Cap Order*”).

<sup>21</sup> / *Id.*, at ¶ 7.

**V. Adjusting the CETC Caps *Prior to Making Available a Replacement Support Mechanism, Such As A Broadband Mobility Fund, Would Contravene the Universal Service Principles of Competitive Neutrality, “Specific,” “Predictable” and “Sufficient” Support, and is *Not* Essential to Implementation of the National Broadband Plan.***

Verizon Wireless and its majority owner, the incumbent landline carrier Verizon Communications,<sup>22</sup> argue that “[a]djusting state-specific CETC high cost support caps to reflect relinquished ETC status and corresponding universal service funding is essential in order to phase out voice support and repurpose the fund for broadband as the National Broadband Plan recommends.” However, this is not accurate:

- The National Broadband Plan does not require that competitive carriers lose funding *before* incumbent wireline carriers lose theirs. That would contravene the universal service principles of competitive neutrality, “specific,” “predictable” and “sufficient” support. Even Verizon later mentions the “references in Section 254 to ‘specific’ and ‘predictable’ USF programs and support—and contributions collected for ‘established’ universal service mechanisms.....”<sup>23</sup>
- Moreover, the National Broadband Plan should *transition* carriers rather than depriving their customers of supported service. The Plan should permit all ETCs, including CETCs, to convert their existing funding to broadband funding, effectuating a seamless transition to the broadband funding that would not be customer-impacting, rather than

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<sup>22</sup> / A. Thompson and L. Fortado, “Verizon Said To Be In Talks With Vodaphone On Wireless Business,” *BusinessWeek*, March 28, 2010,

<sup>23</sup> / Comments of Verizon and Verizon Wireless, emphasis supplied, at 5 (*citing* “47 U.S.C. § 254(b)(5) (requiring that universal service policies ensure that there are ‘*specific, predictable and sufficient Federal and State mechanisms* to preserve and advance universal service’) (emphasis added); and 47 U.S.C. § 254(d) (requiring that contributions to universal service be structured in such a way that carriers contribute ‘on an equitable and nondiscriminatory basis, to the *specific, predictable, and sufficient mechanisms established by the Commission* to preserve and advance universal service’) (emphasis added)”).



*removing* funding for existing services, inexplicably expecting carriers to be able to continue to provide service in high-cost areas without funding for an undetermined period of time, and *then* permitting them to apply for broadband funding. This would contravene the principles set forth in the Act, would not be economically viable for the majority of rural carriers, and would benefit carriers that already enjoy marketplace dominance, at the expense of customers. This would lead to a continued decrease<sup>24</sup> in marketplace competition, at the expense of consumers.

Until and unless Congress authorizes a broadband mobility fund, the FCC has no authority to permit the diversion of funding designated for CETCs for support under the existing plan. Any reduction in the Fund should be at the expense of the carriers who are still receiving support for the cost of serving customers *they no longer serve* – who have not reduced their costs despite losing millions of customers, *see supra* n.15 – not the carriers who are now paying for infrastructure and maintenance to support those customers.

**VI. Supported Carriers Are Motivated To Provide Rates, Coverage and Service Quality Comparable to those in Urban Areas, as Required By The Statute. Carriers Required to Relinquish Support Are Deprived of Such Motivation And Unlikely To Adequately Serve Remote Areas, Where They Would Provide Service At A Loss.**

Carriers relinquishing support have an economic disincentive to provide acceptable rates, coverage, and service quality. Supported carriers fill the void. When a carrier ceases provision of supported service in a high-cost area, generally it is either withdrawing from serving the area, or it may be using profits from urban areas to subsidize any continued provision of service to the

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<sup>24</sup> / “The U.S. Government Accountability Office has determined that ‘[t]he primary change in the wireless industry since 2000 has been the consolidation of wireless carriers.’” Joint Petition for Reconsideration of the Corr Wireless Order, WC Docket No. 05-337, CC Docket No. 96-45, at n.36 (Oct. 4, 2010), *citing* U.S. Government Accountability Office, Report to Congressional Requesters, *TELECOMMUNICATIONS: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry*, at 10-11 (July 2010, rel. Aug. 27, 2010).

area. Such a carrier, once it no longer receives high-cost support, would be economically motivated to serve fewer rural areas, and provide lower quality service at higher rates, because it would be providing services in high cost areas at a loss. This is the very reason why universal service is necessary – in order that some carriers will have the support enabling provision of quality service and coverage for high-cost areas, at rates comparable to those in urban areas.

Competitive carriers can fill this role and also spur improvement in the marketplace for services. Facilitation of marketplace competition is a longtime consideration of both Congress and the Commission in connection with the development of FCC policies relating to telecommunications. For example, Congress provided that FCC spectrum auction design must seek to promote purposes including:

*promoting economic opportunity and competition* and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants....

47 U.S.C. § 309(j)(3). Similarly, in making available spectrum, the FCC must consider whether its methods will advance objectives including: “encourage competition and provide services to the largest feasible number of users.”<sup>25</sup>

**VII. The National Broadband Plan States That Competition Furthers The Public Interest. It Does Not Require Current Reduction Of Support for Basic Service While the National Broadband Plan Is Under Consideration by Congress.**

In the contemporary context, the National Broadband Plan states that government can influence the broadband marketplace by, among other things, “Design[ing] policies to ensure robust competition and, as a result, maximize consumer welfare, innovation and investment.”<sup>26</sup>

The recommendations in the National Broadband Plan are placed in categories including:

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<sup>25</sup> / 47 U.S.C. § 332(a)(3); *see also, e.g.*, 47 U.S.C. § 332(c)(1)(C)

<sup>26</sup> / National Broadband Plan, at XI.

“Design policies to ensure robust competition and, as a result, maximize consumer welfare, innovation and investment.”<sup>27</sup> The FCC, accordingly, recognizes that competition leads to increased consumer welfare, innovation and investment.

The National Broadband Plan provides: “Rather than add new burdens to the already strained contribution base, we must make the tough choice to shift existing support that is not advancing public policy goals in order to directly focus those resources on communities unserved by broadband.”<sup>28</sup>

The Plan does *not* suggest eliminating support that *is* advancing public policy goals (use for purposes already designated under the Act), *before* making available support for broadband service by the same carriers to the same areas. As noted by the New Mexico Public Regulation Commission, delays may result in a long period of time before carriers see any broadband funding via the contemplated Mobility Fund: “The impact of the proposed rulemaking on states where CETCs are relinquishing their ETC designation and federal support payments will be particularly harmful if the reform of the Federal USF and adoption of the National Broadband Plan (“NBP”) Connect America Fund enters into a period of protracted litigation.” NMPRC Comments, at 2.

*Competitive service is essential in rural areas, not just urban locations.* Verizon asserts, “Government subsidies are clearly not necessary where service is in fact being provided by unsubsidized carriers.” This is incorrect. *Support is necessary if competition is to exist and – in some areas, as pointed out by the New Mexico commission – if service is to exist at all.* We believe federal regulators have not forgotten the abuses that led to the breakup of the Bell System or the Congressional decision to authorize mobile services spectrum auctions (facilitating

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<sup>27</sup> / *Id.*, at 9.

<sup>28</sup> / *Id.*, at 10.

competition to the initial cellular “duopoly”). Competition requires carriers to become more efficient, to improve innovation, deployment, and customer service – important aspects of the “public service” mandate. An absence of competition disserves the public interest.

**VIII. Support to Several CETCs in an Area is Not Duplicative; it is Portable. Support to CETCs Grew Simply Because More High Cost Customers Were Requesting Service. Cell Sites and Equipment Must Receive Designated Support or the Expense May Result in their Unavailability for Broadband Rollout.**

***a. Support to CETCs is Portable, Not Duplicative.***

Support among CETCs moves with the customer from provider to provider – and thus is *not* duplicative. The reason the total amount of support to CETCs increased prior to the cap is because incumbent ETCs have been losing basic services customers to new competitors. The number of incumbent wireline access lines served have declined as competitive carriers’ customers have increased – that is, there has been a transition of support from one sort of provider to another, rather than a duplication of support.<sup>29</sup> If a provider that no longer serves the customer is still receiving support for these departed customers, that is an issue to be addressed with such providers, rather than by penalizing the public with withdrawal of support for the desired services.

***b. Support to CETCs Grew Because More High Cost Customers Were Requesting Service.***

The growth in CETC support over time, prior to the cap, was simple evidence of the popularity of new technologies, including in rural areas that deserve to receive the same services available in urban areas. The maintenance of ILEC high-cost support over the same period of time, however, does not reflect the corresponding decrease experienced in that sector’s high cost subscriber base. Growth in support to CETCs mirrors the departure of the landline retail

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<sup>29</sup> / See *supra* n. 15.

customer base for basic voice services, to CMRS carriers – a steady exodus that ordinarily would result in a decrease in support to landline entities for provision of basic services. We respect our landline brethren, and understand the contention that a line cannot be entirely removed if it passes a former customer’s house on the way to the home of an existing customer. Yet this does not mean that a competitive carrier willing to serve the high-cost customer need not receive the support needed to serve that customer. The support is critical for provision of services. If the support is not received, soon the only option for basic service in such areas will be a single carrier with monopoly control over pricing to customers, service quality, and availability. This would be a great disservice to the public in high-cost areas.

***c. Cell Sites and Equipment Must Receive Designated Support or the Expense May Result in Unavailability for Broadband Rollout.***

The consequences of continuing diminution of CETC support do not bode well for the rollout of wireless broadband. We urge the Commission to remedy this matter. In some high cost areas, if per-line support continues to diminish under the cap, CETCs may need to dismantle cell sites and base station equipment for which maintenance is costly. These cell sites and equipment, provided they are instead preserved by continued receipt of support rather than depletion under the cap, will be helpful in future provision of broadband.<sup>30</sup> The regulatory cap is already likely to jeopardize states’ buildout imperatives for CETCs, and is most likely slowing or reversing the rollout of mobile broadband to these customers. To further reduce funding to CETCs would jeopardize competition and provision of service.

The Commission should not continue to chip away at support to competitors; this will only lead to monopoly service – and eventually, perhaps, no service – to some rural areas. As

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<sup>30</sup> / As noted by the Virgin Islands commission, “The Territory would be less likely to benefit from the new federal policy goal of increased broadband use and services if there are no eligible bidders and no funding to provide the necessary infrastructure.” VIPSC Comments, at 2.

noted by the New Mexico Commission, there are “many rural areas of New Mexico where *cell towers are opening up wireless service for the first time. A service is not a duplicative legacy voice service if there are no services available in the area where it is being deployed...*”<sup>31</sup>

Even underserved areas, with lines reaching only a few portions of the area, benefit from a competitive carrier providing service to customers who did not previously have access to telephone service.

## **IX. Conclusion.**

MTPCS urges the Commission not to amend the interim cap rule to adjust a state’s interim cap amount if a competitive ETC serving the state relinquishes its ETC status. In addition, the Commission should not make permanent any waiver of Section 54.709(b) or otherwise enable itself to direct USAC to reserve reclaimed funds.

The Commission must permit carriers to retain their existing towers and equipment, as necessary to permit rapid and efficient progression toward the broadband future. In order to become a leader in deployment of mobile broadband, the United States cannot underfund existing infrastructure, leading to potential abandonment or disrepair; it should provide continuous and predictable funding to prudently retain its prior investment in the strong steel towers that should serve as platforms for future mobile broadband.

Wireless carriers contribute disproportionately to the high-cost fund, and should not be targeted for support reduction out of a mistaken belief that supporting multiple CETCs is “duplicative.” Universal service among wireless CETCs is portable, not duplicative; it travels with the customer and only goes to the provider currently serving the high-cost customer. Therefore, it is irrelevant how many wireless CETCs are designated; support to CETCs is

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<sup>31</sup> / NMPRC Comments, at 3.

allocated per customer, not per area. Support to wireless CETCs has risen as the number of incumbent retail access lines has fallen and the wireless customer base has grown. Rewarding success with punishment that could result in rollback of service in rural areas is no way to recognize the choices of the American public.

MTPCS proposes that in any state or insular area where CETCs are not receiving the full amounts for which they would have been eligible absent the cap, relinquished funds should be restored to the existing pool to support provision of high cost services by such CETCs. Conversely, if CETCs are receiving the full amounts for which they would have been eligible absent the cap, MTPCS recommends that the cap amount for the state remain not less than the 2008 level, and the relinquished funds could be reserved by USAC, but if and when additional CETCs are designated or additional lines added to the CETC eligible lines in the state or territory, support disbursements would commence promptly for those newly eligible lines from the pool, and USAC would start reserving a lesser amount each month.

In this Reply, MTPCS details how the proposals will indeed reduce funding to CETCs. Until and unless Congress authorizes a broadband mobility fund, MTPCS respectfully suggests that the FCC lacks authority to permit the diversion of funding already designated for CETCs under the existing Universal Service Fund rules. Until a broadband mobility fund is made available, “sufficient” and “predictable” support for competitive basic service remains necessary in order to promote the public welfare, fulfill the Commission’s statutory mandates under the Act, extend service to areas unserved by incumbent carriers, and avoid the abuses of an overly concentrated industry. The residents of rural and insular areas, including emergency services providers, deserve competitive rates, motivated extension of service, and solid service quality.

Accordingly, MTPCS urges the Commission not to adopt the proposals in the *Corr Wireless Notice*.

Respectfully submitted,

MTPCS, LLC

By: /s/ Julia K. Tanner

Julia K. Tanner  
MTPCS, LLC D/B/A CELLULAR ONE  
1170 Devon Park Drive, Suite 104  
Wayne, Pennsylvania 19087



## CERTIFICATE OF SERVICE

I hereby certify that, on October 21, 2010, I caused a true and correct copy of the foregoing Comments to be served by electronic mail on the following:

Julius Genachowski, Chairman  
Federal Communications Commission  
445 12th Street, SW, Room 8-B201  
Washington, D.C. 20554  
[Julius.Genachowski@fcc.gov](mailto:Julius.Genachowski@fcc.gov)

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12th Street, SW, Room 8-B115  
Washington, D.C. 20554  
[Michael.Copps@fcc.gov](mailto:Michael.Copps@fcc.gov)

Commissioner Robert M. McDowell  
Federal Communications Commission  
445 12th Street, SW, Room 8-C302  
Washington, D.C. 20554  
[Robert.McDowell@fcc.gov](mailto:Robert.McDowell@fcc.gov)

Commissioner Mignon Clyburn  
Federal Communications Commission  
445 12th Street, SW, Room 8-A302  
Washington, D.C. 20554  
[Mignon.Clyburn@fcc.gov](mailto:Mignon.Clyburn@fcc.gov)

Commissioner Meredith Attwell Baker  
Federal Communications Commission  
445 12th Street, SW, Room 8-A204  
Washington, D.C. 20554  
[Meredith.Baker@fcc.gov](mailto:Meredith.Baker@fcc.gov)

Ted Burmeister  
Attorney Advisor  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
[Theodore.Burmeister@fcc.gov](mailto:Theodore.Burmeister@fcc.gov)

Charles Tyler  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
[Charles.Tyler@fcc.gov](mailto:Charles.Tyler@fcc.gov)

Best Copy and Printing, Inc.  
[fcc@bcpweb.com](mailto:fcc@bcpweb.com)

By: /s/ Julia K. Tanner  
Julia K. Tanner